IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

O.J.APPEAL NO. 57 OF 2004
In
COMPANY PETITION NO. 60 OF 2003

With

CIVIL APPLICATION NO. 114 OF 2004
In
O.J.APPEAL NO. 57 OF 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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SHREE RAMA MULTI TECH LTD. - Appellant(s)

Versus

UTI BANK LIMITED - Respondent(s)

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Appearance :
MR. R.S. SANJANWALA for Appellant(s).
MRS. POONAM MATHUR for M/S. SINGHI & CO. for Respondent(s).
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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

and

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 27/02/2006

ORAL JUDGMENT
(Per : HONOURABLE MR.JUSTICE R.S.GARG)

1. Mr.R.S.Sanjanwala, learned Counsel for the

appellants, submits that since after admission of the Company Petition, the order of advertisement was executed and the date of hearing was advertised in the newspaper, but, during the pendency of this appeal, certain proposals for compromise and framing a Scheme were floated, which, ultimately, resulted in positive findings; almost every secured creditor has accepted the Scheme, but, some of the unsecured creditors have objected to it. According to him, the Scheme has already been filed in the Court for its approval. He submits that the matter relating to the Scheme will have to be finally disposed of by the learned Company Judge and if the findings recorded in the order of admission are taken to be *res judicata* against the appellants, then, the Scheme is likely to be adversely affect them. He submits that liberty be given to the appellants to raise all the questions, which have been tentatively decided by the learned Judge while admitting the Company Petition.

2. Mrs.Poonam Mathur, learned Counsel for the respondents, submits that the Scheme, even if is approved, would not adversely affect the present appellants because the same is at the instance of the unsecured creditor.

3. At this stage, we are not required to decide that what would be the effect and impact of the Scheme if it is approved by the competent Court. The question only is when the order directing admission decides certain issues, whether such an order could be taken to be final for all practical purposes or such findings are deemed to be the tentative findings for

the purposes of admission of the petition.

4. In our considered opinion, when a Court admits a matter, it thinks loudly and records tentative findings. If such findings are taken to be final and binding on the parties, then, any observation made by the Judge, in favour of the appellant or the petitioner, would seal the fate of the other side. It is trite law that admission of a matter would not be final for all practical purposes unless the matter is finally disposed of. We are of the opinion that the findings recorded by the learned single Judge are tentative in nature and the questions are still to be argued before the learned single Judge at the time of final hearing of the matter.

5. With the observations aforesaid, Mr.Sanjanwala, feels satisfied and submits that with these observations the appeal may be disposed of. The appeal stands disposed of accordingly. The interim order granted earlier stands vacated. O.J.Civil Application No.114 of 2004 is disposed of. No orders as to costs.

[R.S.Garg, J.]

[Bankim N. Mehta, J.]

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